

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Haruki TODA

Serial No. 10/507,475

Filed: September 10, 2004

For: Phase-Change Memory Device

Art Unit: 2858

Examiner: Not Assigned

Confirmation No. 1274

**DECLARATION OF TROY M. SCHMELZER**

Mail Stop Petitions  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Mail Stop Petitions  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450, on  
April 19, 2006

Date of Deposit

Juanita Soberanis,

Name

*Juanita Soberanis* 4/19/2006  
Signature Date

I, TROY M. SCHMELZER, declare as follows:

1. I am a registered patent attorney and a partner in the law firm of Hogan & Hartson LLP, which is responsible for prosecuting this patent application.

2. This application was filed on September 10, 2004 without a signed declaration of the inventor Haruki TODA.

3. The docketing department of our office generates a docket report each day for each attorney listing all cases for which that attorney is responsible and any deadlines or status checks that are due that day. Each attorney is required to review each entry, make a notation as to the status of each entry, and return the report to the docketing department for appropriate action by the end of the day.

4. My daily docket report for February 17, 2006 is attached as Exhibit A. On February 17, 2006, this application appeared on my docket report, at page 14, for a routine PAIR status check. Accordingly, I accessed PAIR to check the status of this application. PAIR indicated that the application was still undergoing pre-examination processing. Therefore, I indicated that nothing was new and that the matter could be advanced another three months for another status check.

5. My daily docket report for March 10, 2006 is attached as Exhibit B. On March 10, 2006, this application appeared again on my docket report for a publication status check. Accordingly, I accessed PAIR to check on the publication status of the application. At that time, I noticed an entry indicating that a "Notice of DO/EO Missing Requirements" had been mailed on February 17, 2005. I immediately reviewed the file and found no indication that any such Notice was outstanding or ever received by our firm. I attempted to obtain a copy of the Notice from the PAIR image file wrapper, however, the image file wrapper was not and is still not available on PAIR. I also placed a call to the telephone number 703-921-1282 associated with the file location, but there was no answer, and no answering machine or service with which to leave a message.

6. From March 10, 2006 to April 4, 2006, I continued to investigate this matter and was unable to access the Notice that had apparently been mailed, and was unable to obtain an answer or any information from the telephone number 703-921-1282 associated with the file location. In this regard, a copy of a PAIR status page printed on April 4, 2006, along with my notations, is attached as Exhibit C.

7. On April 5, 2006, I instructed my assistant Juanita Soberanis to contact the PCT Help Desk for assistance. Juanita called the Help Desk at 571-272-4300 and spoke with Wanda Banks, who provided a copy of a "Notification of Missing Requirements under 35 USC 371 in the United States Designated/Elected Office (DO/EO/US)" to us via facsimile. Copies of the facsimile and Notification that we received are attached as Exhibit D. The Notification indicated that it was mailed on February 17, 2005.

8. As of this date, our office has still not received the Notification of Missing Requirements by mail. The first date that the Notification was available to us for review and preparation of an appropriate reply was April 5, 2006.

9. Our office has not received a Notice of Abandonment, and there is no indication on PAIR that the application is abandoned or that a Notice of Abandonment was mailed.

10. In view of these circumstances, we immediately initiated an investigation of our docketing and mail records in order to gather evidence in support of a petition to reset the time period for response to the outstanding Notification. Our investigation uncovered no record or evidence of any kind that the Notification of Missing Requirements was ever received by our office.

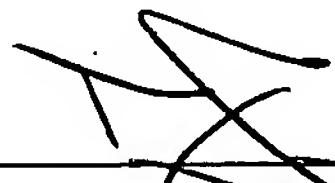
11. I have searched the file jacket and docket records and found no indication or other evidence that the Notification was ever received.

12. Our office maintains a log of all papers received by mail each day from the U.S. Patent and Trademark Office. Copies of our logs from February 17, 2005, the date on which the Notification is indicated as having been mailed, to March 31, 2005, are attached as Exhibit E. These logs do not contain any indication that any paper was received by our office in connection with this application during that timeframe, including in particular the Notification of Missing Requirements.

13. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-1314. A copy of this sheet is enclosed.

Date: April 19, 2006

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